

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A CONDITIONAL USE PERMIT FOR A FUEL STATION, CONVENIENCE MARKET AND CARWASH ON A 66.49-ACRE SITE LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, -002, -004, -005 & -007)**

**WHEREAS**, such request was considered by the City Council at their regular meeting of November 16, 2005, at which time the City Council approved use permit application, UP-05-11: Cochrane – DiNapoli/Browman; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The approved project is consistent with the Zoning Ordinance and the General Plan as amended by applications ZA-04-12 and GPA-04-12.

**SECTION 2.** An Environmental Impact Report has been prepared for this project as part of the following applications: General Plan Amendment, Zoning Amendment, Subdivision, Development Agreement, Use Permit and Architectural and Site Plan Review. Mitigation measures and a monitoring program will be adopted for those environmental impacts identified in the report.

**SECTION 3.** The approved conditional use, based on the evidence and facts in the record, has been found consistent with the criteria for use permit approval contained in Section 18.54.050 of the Zoning Code.

**SECTION 4.** The City Council hereby approves a conditional use permit for a fuel station, convenience market and carwash facility within the Cochrane Road PUD. The exact location and design of the gas station, convenience market and carwash facility shall be reviewed and approved by the Architectural Review Board as part of the Architectural and Site Plan Review process.

**SECTION 5.** The approved project shall be subject to the following conditions:

- A. Signed Resolutions. Within 30 days of conditional use permit approval, the applicant shall submit two (2) signed copies of Resolution No. 05-\_\_ to the Planning Division.

- B. Time Limitations. The Conditional Use Permit approval shall remain in effect for ten (10) years from the effective date of the Council approval Resolution. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to the expiration date.
- C. Architectural and Site Review. Within nine (9) years of conditional use permit approval, the applicant shall submit an application for Architectural and Site Plan Review approval by the City's Architectural Review Board. The Architectural and Site Plan Review application shall include the proposed site layout (including access and on-site circulation), building design, and landscaping.
- D. Use Approval. The use shall operate consistent with the applicant's Statement of Proposed Operations, date stamped November 4, 2005, on file with the Planning Division.
- E. Annual Review. In accordance with Section 18.54.090 of the Municipal Code, the Community Development Department shall conduct an annual review of the approved use for compliance with specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section as necessary to ensure compliance with said conditions.
- F. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted.

G. Other Conditions:

1. The applicant shall comply with the mitigation measures of the certified Environmental Impact Report and the Mitigation Monitoring and Reporting Program.
2. The fuel station, convenience market and carwash shall be designed in accordance with the Cochrane Road PUD Guidelines, as adopted as part of zoning amendment application ZA-04-12.
3. The fuel station, convenience market and carwash shall not be located at the corner of Mission View and Cochrane Road, nor along the Cochrane Road project frontage.
4. An "Exit Clause" shall be recorded prior to the issuance of a building permit for a fuel center. The language for the Exit Clause shall be subject to the review and approval by the City Attorney. The Exit Clause shall include some form of surety to guarantee the removal of the fuel center use if abandoned by an operator and a new operator is not found within a one year period. The Planning Commission may approve up to two, one-year extensions upon receipt of documentation of a pending agreement with a new operator or other indication of potential sale or reuse.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 16<sup>th</sup> Day of November, 2005 by the following vote.

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**         **COUNCIL MEMBERS:**  
**ABSTAIN:**   **COUNCIL MEMBERS:**  
**ABSENT:**     **COUNCIL MEMBERS:**

**🔒 CERTIFICATION 🔒**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 16, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

☞ A F F I D A V I T ☞

We, **Darryl Browman of Browman Development Company, Inc.** and **John DiNapoli of JP DiNapoli Companies, Inc.**, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

GENERAL PARTNER:

Morgan Hill DBP LLC  
a California limited liability company

By: JP DiNapoli Companies, Inc.  
a California corporation  
its

By: \_\_\_\_\_  
Name: John DiNapoli  
Title: V.P.

Date: \_\_\_\_\_

By: Browman Development Company, Inc.  
a California corporation  
its

By: \_\_\_\_\_  
Name: Darryl Browman  
Title: President

Date: \_\_\_\_\_